

SIKKIM



GOVERNMENT

GAZETTE

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

Gangtok

Saturday 1st September, 2018

No. 449

**GOVERNMENT OF SIKKIM
HOME DEPARTMENT
MANAN BHAWAN
GANGTOK**

No. 61/Home/2018

Dated: 01/09/2018

**SKM/GOV/2018/7249
6th August, 2018**

ORDER

Whereas, a question was raised before me in petitions submitted by Shri O.P. Bhandari and others on 30/10/2017 seeking disqualification of the following fourteen (14) members of Sikkim Legislative Assembly under Clause 1 (a) of Article 191 of the Constitution of India:-

- A. 1. Shri Danorbu Sherpa (AC-6 Daramdin BL);
2. Shri Sonam Dadul Bhutia (AC-1 Yoksam Tashiding BL);
3. Smt. Tilu Gurung (AC-13 Namthang Rateypani)
4. Shri Karma Sonam Lepcha (AC-5 Rinchenpong BL);
5. Shri Ugen Nedup Bhutia (AC-29 Kabi Lungchuk BL);
6. Shri Shyam Pradhan (AC-26 Arithang);
7. Shri Hemendra Adhikari (AC-19 Rhenock);
8. Shri Gopal Baraily (AC-18 West Pandam SC);
9. Dr. Mechung Bhutia (AC-24 Martam Rumtek BL);
10. Shri Pintso Chopel (AC-27 Gangtok BL);
11. Shri Timothy William Basnett (AC-25 Upper Tadong);
- B. 12. Shri Bek Bahadur Rai (AC-22 Namcheybong);
13. Smt. Chandra Maya Subba (AC-2 Yangthang);
- C. 14. Shri Bikram Pradhan (AC-20-Chujachen);

And, whereas, the opinion of the Election Commission of India under Article 192 Clause (2) of the Constitution of India was obtained vide reference no. 113/1(G)/ECI/LET/FUNC/JUD/2017/Registry/698, dated 20th April, 2018 with regard to 13 members of Sikkim Legislative Assembly at A & B detailed/listed above and vide reference no. 113/1(G)/ECI/LET/FUNC/JUD/2017/Registry/494 dated 24th July, in respect of Shri Bikram Pradhan at C above.

And, whereas, pursuant to the former opinion of 20th April, 2018, an order no. SKM/GOV/2018/7141, dated 25th April, 2018 was passed.

And, whereas, with regard to Shri Bikram Pradhan at C, the Election Commission of India has opined vide reference dated 24th July, 2018 as under: **"This Commission has perused the said Opinion dated 08.02.2007 given by this Commission in Reference Case No. 53 (G) of 2006 as well as the Sikkim Legislative Assembly (Removal of Disqualification) Amendment Act, 1996 vide which clause 3 (aa) was added to the Sikkim Legislative Assembly (Removal of Disqualification) Act, 1978 which provides exemption from any disqualification arising out of holding an Office of Profit for *"the office of the Government Chief Whip".*"**

And, whereas, having considered the facts on record as contained in the opinion of the Election Commission of India and having been fully satisfied thereof,

I, Shriniwas Patil, Governor of Sikkim in exercise of the powers conferred on me under Article 192 of the Constitution of India, do hereby decide that Shri Bikram Pradhan is not disqualified from being a member of the Sikkim Legislative Assembly.

Shriniwas Patil

ANNEXURE TO THE ORDER OF THE GOVERNOR

REFERENCE CASE NO. 1 (G) 2018

[REFERENCE RECEIVED FROM THE HON'BLE GOVERNOR OF SIKKIM UNDER ARTICLE 192 (2) OF THE CONSTITUTION OF INDIA]

IN REF: REFERENCE CASE NO. 1 (G) OF 2018- A REFERENCE FROM THE HON'BLE GOVERNOR OF SIKKIM UNDER ARTICLE 192 (2) OF THE CONSTITUTION OF INDIA ON A REPRESENTATION FILED BY SHRI O.P. BHANDARI SEEKING DISQUALIFICATION OF 14 MEMBERS OF THE SIKKIM LEGISLATIVE ASSEMBLY.

OPINION

1. This is a reference seeking 'opinion' of the Election Commission of India, which has been received from the Hon'ble Governor of Sikkim on 29.01.2018 under Article 192(2) of the Constitution of India, on three representations dated 30.10.2017 filed by Shri O.P. Bhandari (hereinafter referred to as the 'Petitioner') seeking disqualification of the following 14 Members of the Sikkim Legislative Assembly (hereinafter referred to as 'Respondents') for holding Office of Profit as:
 - (A) Parliamentary Secretaries to the Government of Sikkim
 - (i) Shri Danorbu Sherpa
 - (ii) Shri Sonam Dadul Bhutia
 - (iii) Smt. Tilu Gurung
 - (iv) Shri Karma Sonam Lepcha
 - (v) Shri Ugen Nedup Bhutia
 - (vi) Shri Shyam Pradhan
 - (vii) Shri Hemendra Adhikari
 - (viii) Shri Gopal Baraily
 - (ix) Dr. Mechung Bhutia
 - (x) Shri Pintso Chopel
 - (xi) Shri Timothy William Basnett
 - (B) Chairman-Public Accounts Committee
 - (xii) Shri Bek Bahadur Rai
 - (C) Chairperson – Estimates Committee of the Sikkim Legislative Assembly
 - (xiii) Sushri Chandra Maya Subha

(D) Government Chief Whip

(xiv) Shri Bikram Pradhan

2. The Commission gave its opinion in respect of the Hon'ble Members of the Legislative Assembly whose names have been mentioned under the heads – 'A', 'B' and 'C' above on 18.04.2018. However, the Commission did not give any opinion in respect of the head 'D', i.e. Shri Bikram Pradhan, due to non-availability of complete information at the time. The Commission *vide* letter dated 13.06.2018 sought the reply of Shri Bikram Pradhan in this matter.
3. Shri Bikram Pradhan MLA, in response to the Commission's letter dated 13.06.2018 has filed his reply on 21.06.2018. The respondent has brought to the attention of this Commission the Sikkim Legislative Assembly (Removal of Disqualification) Amendment Act, 1996 *vide* which clause 3 (aa) was added to the Sikkim Legislative Assembly (Removal of Disqualification) Act, 1978 which provides for adding "*the Office of the Government Chief Whip*" to the list of exempted offices. He has also placed reliance on Opinion dated 08.02.2007 given by this Commission in Reference Case No. 53 (G) of 2006 wherein this Commission had held the office of Government Chief Whip in the State of Sikkim to be an exempted office.
4. The Commission has perused the said Opinion dated 08.02.2007 given by this Commission in Reference Case No. 53 (G) of 2006 as well as the Sikkim Legislative Assembly (Removal of Disqualification) Amendment Act, 1996 *vide* which clause 3 (aa) was added to the Sikkim Legislative Assembly (Removal of Disqualification) Act, 1978 which provides exemption from any disqualification arising out of holding an Office of Profit for "*the Office of the Government Chief Whip*".

CONCLUSION

5. In view of the above, this Commission hereby opines that the office of Government Chief Whip falls under exempted category and the disqualification, if any, attracted by holding the said office stands removed by the operation of the said amended Act of 1978 and therefore, Shri Bikram Pradhan is not disqualified for holding Office of Profit.

Sd/-
Sunil Arora
(ELECTION COMMISSIONER)

Sd/-
O.P. Rawat
(CHIEF ELECTION COMMISSIONER)

Sd/-
Ashok Lavasa
(ELECTION COMMISSIONER)

Place: New Delhi

Date: 20.07.2018